

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Brick Houston,

Plaintiff

v.

James Dzurenda, et al.,

Defendants

Case No. 2:21-cv-01338-GMN-DJA

ORDER DISMISSING AND
CLOSING CASE

Plaintiff Brick Houston brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison and Southern Desert Correctional Center. (ECF No. 5). On December 27, 2021, this Court screened Houston's Complaint, dismissed his claims with leave to amend, and ordered him to file an amended complaint by January 26, 2022. (ECF No. 4). The Court warned Houston that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 11). That deadline expired and Houston did not file an amended complaint, move for an extension, or otherwise respond.

I. Discussion

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of

1 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
2 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
3 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

4 The first two factors, the public's interest in expeditiously resolving this litigation
5 and the Court's interest in managing its docket, weigh in favor of dismissal of Houston's
6 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
7 because a presumption of injury arises from the occurrence of unreasonable delay in filing
8 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
9 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
10 cases on their merits—is greatly outweighed by the factors favoring dismissal.

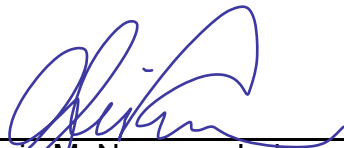
11 The fifth factor requires the Court to consider whether less drastic alternatives can
12 be used to correct the party's failure that brought about the Court's need to consider
13 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
14 that considering less drastic alternatives *before* the party has disobeyed a court order
15 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
16 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
17 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's
18 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
19 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
20 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
21 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
22 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
23 unless Houston files an amended complaint, the only alternative is to enter a second order
24 setting another deadline. But the reality of repeating an ignored order is that it often only
25 delays the inevitable and squanders the Court's finite resources. The circumstances here
26 do not indicate that this case will be an exception: there is no hint that Houston needs
27 additional time or evidence that he did not receive the Court's screening order. Setting
28

1 another deadline is not a meaningful alternative given these circumstances. So the fifth
2 factor favors dismissal.

3 **II. Conclusion**

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
6 prejudice based on Houston's failure to file an amended complaint in compliance with this
7 Court's December 27, 2021, order and for failure to state a claim. The Clerk of Court is
8 directed to enter judgment accordingly and close this case. No other documents may be
9 filed in this now-closed case. If Houston wishes to pursue his claims, he must file a
10 complaint in a new case.

11
12
13 DATED THIS 2 day of February 2022.

14
15 
16 _____
17 Gloria M. Navarro, Judge
18 United States District Court
19
20
21
22
23
24
25
26
27
28